

REMARKS

Summary Of The Office Action & Formalities

Status of Claims

Claims 1, 2 and 4-20 are all the claims pending in the application.

Allowable Subject Matter

Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 15-20 are allowed.

Art Rejections

1. Claims 1, 3¹-10 and 12-14 are rejected under 35 U.S.C. § 102(e) as being anticipated by Sanchez (US 2003/0168476).

2. Claims 1-10 and 12-14 are rejected under 35 U.S.C. § 102(b) as being anticipated by McKinney (US 4,257,561).

Applicant respectfully traverses.

Claim Rejections - 35 U.S.C. § 102

1. *Claims 1, 3-10 and 12-14 In View Of Sanchez (US 2003/0168476).*

In rejecting claims 1, 3-10 and 12-14 in view of Sanchez (US 2003/0168476), the grounds of rejection state:

Sanchez discloses a fluid dispenser head 1 that cooperates with a dispenser member 31 on a fluid reservoir 21 including a fluid duct with an inlet 118b and an outlet dispensing orifice 122

¹ Claim 3 was canceled in the December 29, 2009 Amendment.

located on the distal end of the rotary portion, a closure means that includes a closure member 123 that rotates to an open position at 124, a non-rotary portion 11, a rotary portion 12, displacement means 120 that can be grasped by a user to rotate 12 and 123 with respect to 11 as claimed. In regard to claim 9, the distal area of 123 adjacent 124 constitutes the closure member because it performs the valve function of either sealing or opening outlet 118a as shown in figures 3A and 3B, the other end of 123 adjacent 123a constitutes a connection element as claimed because it connects the valve portion adjacent 124 to 116 wherein 116 is an anchor element as claimed because it is the base of the rotary section 12 that supports and secures 12 for rotation of 11. In regard to claim 13, figure 3A is a locked position as claimed which prevents the dome of 125 from being pushed wherein the dome of 125 is a pushbutton that actuates 31.

Office Action at page 2.

Responding to Applicant's arguments in the December 29, 2009 Amendment, the Examiner states :

As claimed the dispenser orifice of Sanchez is one contiguous channel 121a that extends from 124 to 122. When the entrance to 121a is closed the dispenser orifice is also closed and vice versa, when the entrance to 121a is open the orifice 122 is also open as claimed. In regards to Sanchez, Applicant contended that only the end orifice from which a user can recover the fluid can be considered the dispenser orifice.

Office Action at page 3.

Initially, the undersigned representative thanks the Examiner for the interview conducted on April 14, 2010, in which differences between the applied patents and the subject matter of claim 1 were discussed. At the conclusion of the interview, the Examiner agreed to reconsider his position and discuss Applicant's arguments presented during the interview and herein with his Supervisor.

Turning to the grounds of rejection, one main difference between Sanchez and claim 1 is that Sanchez does not disclose or suggest “closure means for selectively closing the dispensing orifice,” as recited in claim 1.

In the grounds of rejection, the Examiner takes the position that the dispenser orifice in Sanchez is a **channel** going from 124 to 122. However, an orifice cannot fairly be characterized as a channel, even when given its broadest **reasonable** interpretation in light of the specification. *See Ex Parte Technofirst S.A.*, BPAI Appeal No. 2009-010931, 10 (2010). (“[W]hile giving claim terms their broadest reasonable interpretation is correct and proper, such interpretations need to be made in view of the specification.” *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005). With such a standard, we do not find the Examiner's alternate interpretations to be consistent with the instant Specification.”). Indeed, even Sanchez refers to the distal end 122, *not the channel*, as the dispensing orifice.

Moreover, as explained during the interview with the Examiner, not only does the plain meaning of the claim language preclude one from reading the “dispenser orifice” on the channel in Sanchez, but the claim language further states that the “**outlet end defines** a dispenser orifice.” Therefore, even if there were any doubt, under no circumstance can the outlet **end** be considered a channel.

During the interview, the Examiner noted that if one closes off the channel **upstream** of the outlet end, then fluid would not flow through the outlet end. While that may be technically true, the claim language is not so broad, but specifically requires closure means for closing the dispensing orifice (*i.e.*, the outlet end), not simply preventing fluid from reaching the dispensing orifice while leaving the dispensing orifice **open**. Sanchez clearly does not disclose this feature.

In view of at least the foregoing, the Examiner is kindly requested to reconsider and withdraw this rejection.

2. Claims 1-10 and 12-14 In View Of McKinney (US 4,257,561).

In rejecting claims 1-10 and 12-14 in view of McKinney (US 4,257,561), the grounds of rejection state:

McKinney discloses a fluid dispenser head 10 that cooperates with a dispenser member 34 on a fluid reservoir 26 including a fluid duct with an inlet adjacent 28 and an outlet dispensing orifice 36 which is located on the rotary portion 10, a closure means that includes a closure member 30 that is closed and opened by screwing and unscrewing rotary member 10 with the upper wall of 10 alternately applying pressure on 30 to close 30 as shown in figure 2 or being spaced from 30 to allow 30 to open and to allow fluid to be dispensed as shown in figure 3, a non-rotary portion 22, displacement means as are threads 24 because they cause the axial motion of rotary portion 10 with a portion of threads 24 located on the non-rotary portion 22 as called for in claim 2. In regard to claim 9, the upper surface wall of 10 surrounding 36 is an anchor element as claimed because it holds or anchors the closure member 30 in place with the sidewall of 10 extending from the top of 10 to the threads 24 being a connection element as claimed. In regard to claim 13, 18 is a pushbutton that is alternately locked and unlocked with 14[] depending on the position of 10 as claimed.

Office Action at pages 2-3.

Responding to Applicant's arguments in the December 29, 2009 Amendment, the Examiner states:

As claimed the dispenser orifice of Sanchez is one contiguous channel 121a that extends from 124 to 122. When the entrance to 121a is closed the dispenser orifice is also closed and vice versa, when the entrance to 121a is open the orifice 122 is also open as claimed. In regards to Sanchez, Applicant contended that only the end orifice from which a user can recover the fluid can be considered the dispenser orifice. In McKinney this orifice is 36. However, with McKinney Applicant is contending the entrance to the dispensing outlet conduit adjacent 30 is the dispenser orifice.

This location corresponds to 124 in Sanchez and is the beginning of the outlet dispenser channel with 36 being the end. As stated in regard to Sanchez, if the entrance channel 34 is closed the outlet 36 is also closed and vice versa and in McKinney 36 is the outlet orifice from which a user can recover the dispensed fluid.

Office Action at page 3.

During the interview, the Examiner agreed that the grounds of rejection based on McKinney are based on essentially the same reasoning as the rejection based on Sanchez, and, in particular, the interpretation of “dispenser orifice.” According, Applicant’s refer the Examiner to discussion above regarding the proper meaning of this claim language. When the language is given its proper meaning, clearly the dispensing nozzle of McKinney does not disclose the recited closure means.

In particular, in McKinney there is no closure means that closes off aperture 36. Rather, the valve 28, and hemispherical portion 30 stop the flow upstream of aperture 36 while leaving this aperture *open*.

Further, in McKinney, the opening in the valve 28 is formed in the non-rotary portion 22.

In view of at least the foregoing, the Examiner is kindly requested to reconsider and withdraw this rejection.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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